

Therefore "confessions " under torture are of no value. Ulpian said

of it, "*Res est fragilis et periculosa et quae mritatem fallat.*"¹

One of the templars said that if he was tortured further he would confess that he had murdered the Saviour. Another said that he would confess anything if he was tortured further, although he was ready to suffer any death for the Order of Templars. He

would confess that he had killed the mother of God.²

A heretic

under torture cried out that Christ, if so treated, would be proved

a heretic.³ Bernard Delicieux declared before King Philip that

Peter and Paul could be convicted of heresy by the methods of

the inquisitors.⁴ Count Frederick von Spee, a Jesuit who opposed

the witch persecutions, is quoted as saying, in 1631, "Treat the

heads of the church, the judges, or me, as you treat those unhappy

ones [accused of witchcraft], subject any of us to the same tor-

tures, and you will discover that we are all sorcerers."⁵ He

quoted an inquisitor who boasted that if he could get the pope

on the rack he would prove him a sorcerer.⁶ In the thirteenth

century "judges were well convinced of the failure of the pro-

cedure with its secret and subjective elements, but they could

not in any other way cope with crime!"⁷

This means, of course, that by long and manifold suggestion

certain selected forms of crime had been stigmatized until the

masses regarded them with horror. Then the apparatus of the

administration of justice was brought to bear to exterminate all

who could be charged with them, and when the process was ob-

jected to as horrible, it was defended on grounds of necessity

to meet the horrible crime. By this action and reaction a great

body of interests was enveloped in a special atmosphere, within

which any excess of savagery was possible. The societal selection was prosecuted by murder of all dissenters.

243. Inquisitorial procedure from Roman law. The Roman criminal procedure was, in part, inquisitorial.⁸ In the later period

¹Digest, XLVII, 18, espec. sec. 23.

²Schotmiiller, *Untergang der Templer*, 141, 311, 352.

⁸Flade, *Inquisitionsverfahren in Deutschland* 84.

⁴Lea, *Inquis* II, 87.

⁶Scherr, *KuUurgesc* 383.

⁶Janssen, *Gesch. d. Deutschen Volkes*, VIII, 541.

⁷Hansen. *Zauberwahn* no.

⁸Mommsen, *Rom.*

Strafrecht 349.